(under which the bye-law was made). I cannot agree with this view. It seems to me that the bye-law is *intra vires* section 4(1)(e) coupled with section 4(2)(a). The bye-law is bad not because it is *ultra vires* the enabling section but because it is inconsistent with, and repugnant to, section 8(1)(b) in that it purports to deprive the Board sitting in its disciplinary capacity of a duty which the Legislature has laid upon it.

I have already said that in laying this duty upon the Board the Legislature has in my view taken the course which is consistent with common sense. If an architect's professional misconduct is to be branded as "infamous" the proper people to apply the brand are members of his profession sitting in judgment on him, who after hearing his defence and weighing all the facts will form their opinion in the light of their professional experience and by the application of their professional standards. By Bye-law 13 the Board in its legislating capacity has purported to remove from the purview of its members sitting in their quasi-judicial or disciplinary capacity any consideration of whether the misconduct amounts to what is "infamous" in the case of twenty-seven forms of misconduct. By this bye-law these twenty-seven forms of misconduct are "deemed to be conduct which is infamous in a professional respect under section 8." No matter what the excuse or the mitigating circumstances, the Board in its disciplinary capacity is precluded from forming any opinion upon whether the man's conduct is "infamous" or not. Being deprived of this right (and duty) which the Legislature conferred upon it, it is left only with the right (and the duty) to decide whether, having regard to all the facts, the person whose conduct they are compelled by the bye-law to deem "infamous" should be struck off. But whatever their decision, and however strong their sympathy, the brand of "infamous" upon their professional colleague must remain.

Mr. Seth has drawn my attention to the Rules made by the Bar Committee under the Advocates and Solicitors Ordinance, which set out what "improper conduct" is. Section 25(2)(b) of that Ordinance appears to leave the question of whether the conduct amounts to "improper conduct" in any particular case to the opinion of the Court. He says that this affords a parallel to this case. I do not feel called upon to express an opinion upon it; indeed it would in my view be wrong to do so. If and when the point should come up for decision under the Advocates and Solicitors Ordinance no good purpose will be served by my having expressed an opinion "obiter" in this case. In my opinion Bye-law 13 is invalid by reason of the words "and shall be deemed to be conduct which is infamous in a professional respect under section 8." Those words purport to take away from the Board a duty with which the Legislature has entrusted them in a disciplinary case; and the purport to deprive an architect of the right not to have his conduct stigmatized as "infamous" except by the judgment of his professional colleagues after a full consideration of the facts.

In conclusion I have been asked to express my view upon the question of whether the procedure which has been adopted by the appellant, by way of Originating Motion, is the correct procedure for appealing to this Court under the provisions of section 8(3) of the Ordinance. In my opinion it is. No procedure is laid down, and therefore by Rule 2 of the Preliminary Rules of the Supreme Court Rules the procedure for the time being in force in England is to be followed. The form of Notice of Appeal in this case follows the form provided in *Lord Atkin's Encyclopaedia of Court Forms* at page 414 (Vol. 2).

The appeal is allowed. It is allowed upon the technical point that the bye-law is invalid. I order that each party pays its own costs.

Appeal allowed.

Re SHAIKH SALMAN BIN ABDUL SHAIKH BIN MOHAMED SHAMEE, DECD.; SYED MOHAMED ALKAFF & ANOR. v. SYED ABUBAKAR ALKAFF & ANOR.

[O. C. J. (Whitton, J.) September 18, 1953]

[Singapore — Originating Summons No. 126 of 1953]

Trusts — Rule against perpetuities — Trust in favour of poor relatives — Whether charitable — Whether vested interests created — Family — Meaning of.

By a Deed of Settlement dated 2nd April 1928 the Settlor conveyed property to the defendants as Trustees, and directed that the income should be held upon various Trusts until "The expiration of the period of twenty-one years from the date when the youngest of the Settlor's sons who shall live to attain the age of twenty-one years shall attain that age or if the Settlor shall die leaving a son or sons under the age of twenty-one years who shall not live to attain the age of twenty-one years then at the expiration of twenty-one years from the date of the death of such son or the last survivor of such sons (if more than one) as shall not live to attain the age of twenty-one years or if no son or sons of the Settlor are under the age of twenty-one years at the date of the Settlor's death then at the expiration of twenty-one years from the date of the Settlor's death", and that thereafter the corpus of the properties should be held in trust for a class of persons to be determined at that date. The Settlor had four sons born after the date of the Settlement, and he died in 1941 leaving sons surviving him, two of them still being minors at the present date. On an application by the Trustees of the Wills of the Settlor to have the validity of the trusts of the Settlement determined by the Court, —

Held: the Corpus Trust infringed the rule against perpetuities, and was invalid, but that this did not necessarily make the Income Trusts invalid and if these were, on the true construction of the Settlement, vested Trusts or Trusts in favour of Charity, they would be upheld (**Gooding v. Read**(1) followed).

One of the Income Trusts was "To pay (out of the rents of the settled properties) the sum of $300 annually to such of the Settlor's family as are from time to time in Arabia and are poor and in distressed circumstances at the sole and uncontrolled discretion of my Trustees." It was argued that the word "family" meant only the Settlor's children, and that a trust in their favour could not be a good charitable trust.

Held: in the circumstances of this case, the word family included more than merely the Settlor's children and that this was a good Charitable Trust and therefore valid for the whole period prescribed by the Settlement. (Principles stated by Jenkins, L.J. in **In re Scarisbrick**(2) applied).

The remaining Income Trust was "To divide (the remaining income) annually amongst such of the Settlor's next-of-kin as would from time to time be entitled thereto according to Mohamedan Law had the Settlor died intestate and in the shares and proportions in which according to the same Law such persons (if more than one) would be so entitled.'

Held: this was a gift to a fluctuating class and that there was therefore no vesting and the Trust was invalid as infringing the rule against perpetuities.

Held further: the failure of the Corpus Trust and the partial failure of the Income Trust gave rise to a resulting Trust of the settled properties in favour of the Settlor and his Estate (subject to the annual payment of $300 in respect of the Charitable Trust up to the date of the determination of the Income Trust).

Cases referred to:—

(1) *Gooding v. Read* 4 De G. M. & G. 510; 43 E.R. 606.

(2) *In re Scarisbrick; Cockshott v. Public Trustee* (1951) Ch. 622.

(3) *Pearks v. Moseley* (1880), 5 App. Cas. 714 at p. 719.

(4) *Williams v. Williams* 1 Sim N.S. 358; 61 E.R. 139.

The following authorities were also cited in argument: *Hampton v. Holman* (1877), 5 Ch. D. 183; *Re Wise* (1896) 1 Ch. 281; *Re Watson* (1892) W.N. 192; *Re Blew* (1906) 1 Ch. 624; *Pigg v. Clarke* 3 Ch. D. 674; *Cheok Chin Huat & Ors. v. Cheok Chin Soon* (1937) M.L.J. 157; *Re Legh's Settlement* (1938) Ch. 44.

ORIGINATING SUMMONS brought by the Trustees of the Wills of a Settlor to determine the validity of the Trusts of Settlement made by the Settlor during his lifetime.

T. E. Atkinson for the plaintiffs the Trustees of the Wills of the Settlor (representing the interests of the persons seeking to have the Trusts of the Settlement declared invalid).

R. H. Green for the defendants the surviving Trustees of the Settlement (representing the interests of the persons seeking to uphold the validity of the Trusts of the Settlement).

The facts and arguments appear sufficiently in the judgment below.

Cur. Adv. Vult.

Whitton, J.: — There are two questions for determination at this juncture:—

(1) Whether upon the true construction of the above mentioned Settlement dated 2nd April 1928, of the said Shaikh Salman bin Abdul Shaikh Shamee, now deceased, the Trusts declared by the Settlor of and concerning the Trust premises now shortly described in the Schedule hereto are void either in whole or in part on the grounds that they infringe the rule against perpetuities, or on any other grounds.

(2) If the answer to prayer (1) is in the affirmative upon what trusts should the said Trust premises now be held by the defendants the surviving Trustees of the said Settlement.

The first matter to be considered is the effect of the words in that part of the Settlement relating to the corpus trust commencing "Upon Trust nevertheless.." and ending ".... would be so entitled." As Mr. Atkinson has pointed out, three alternative forms of limitation are here prescribed, of which the third is not relevant in the circumstances which have happened. As to the corpus trust both counsel were agreed in the view that it was invalid as infringing the Rule against perpetuities, and I do not think there can be any doubt that this is the correct view. As Mr. Atkinson put it, "bringing in unborn sons put the whole matter beyond the prescribed limits of perpetuity." The Rule against perpetuities is set out concisely at pp. 86 — 87 of Vol. 25 *Halsbury* (2nd Ed.) and at pp. 123 — 124 of the same volume there will be found authority for the proposition that a settlement of this nature takes effect from the date of the settlement itself.

Now turning to the income trusts it appears clear that the income trusts do not necessarily fail because the corpus trust fails (*Gooding v. Read*(1)). But before they can be held valid it is obvious the Court must be satisfied they do not in themselves infringe the Rule against perpetuities. In this connection I think Mr. Atkinson has put the matter rightly in saying that before an income trust can be valid for a period exceeding the perpetuity period it must be a vested trust. "The three essentials of vesting", as *Cheshire* puts it (*Modern Real Property* 4th Ed. p. 474), "are ascertained beneficiaries, interests definitely fixed from the point of view of "quantum", and the occurrence of what may perhaps be called enabling events". It will be convenient at this point to quote the first income trust and then to consider its validity in the light of this test. It reads:—

".....during the life of the Settlor to pay the same to him and from and after the death of the Settlor to pay thereout the sum of $300 annually to such of the

Settlor's family as are from time to time in Arabia and are poor and in distressed circumstances at the sole and uncontrolled discretion of my Trustees."

In my opinion the words "as are from time to time" clearly precludes ascertained beneficiaries, and consequently I think that this trust is contrary to the Rule against perpetuities. But even if I am right in this conclusion it remains to be seen whether the validity of the trust can still be upheld on the ground of it being a charitable trust, and so creating an interest the perpetual nature of which is not objectionable. Mr. Atkinson concedes that there can be a valid trust in favour of poor relations, and authority for this proposition is to be found in the recent case of *In re Scarisbrick; Cockshott v. Public Trustee*[2], but contends that the class of relatives, i.e. family, in the present case is too narrow for a charitable trust to be created. This submission he bases on the contention, which, I think, cannot be disputed that the word "family" in legal interpretation ordinarily means legitimate children. Nor do I think one can correctly disagree with Mr. Atkinson in his argument that the fact the settlor has also made provision for his next-of kin elsewhere in the settlement does not necessarily mean he did not mean his own children when he referred to his family. In this connection, however, I agree with Mr. Green when he suggests the Court's first duty is to take the words of the testator and determine their meaning, and then consider whether that meaning brings them within the operation of the rule against remoteness. As was stated by Lord Selborne in *Pearks v. Moseley*[3] :—

"The rule which has always been applied to cases of remoteness is this: You do not import the law of remoteness into the construction of the instrument, by which you investigate the expressed intention of the testator. You take his words, and endeavour to arrive at their meaning, exactly in the same manner as if there had been no such law, and as if the whole intention expressed by the words could lawfully take effect. I do not mean, that, in dealing with words which are obscure and ambiguous, weight, even in a question of remoteness, may not sometimes be given to the consideration that it is better to effectuate than to destroy the intention; but I do say, that, if the construction of the words is one about which a Court would have no doubt, though there was no law of remoteness, that construction cannot be altered, or wrested to something different, for the purpose of escaping from the consequences of that law."

Now in determining the settlor's intention I think the following matters can reasonably be taken into consideration :—

(1) The Settlor was obviously a fairly wealthy man, and there appears to be no strong ground for surmising apprehension on his part that his own children would find themselves in poor and distressed circumstance. If he had I should certainly have expected him to use the word "children".

(2) The use of the word "next-of-kin" in the next trust, though as I have said, it is not, in my opinion, conclusive against the stricter interpretation of the word "family", does I think suggest the wider interpretation is the one which more probably accords with what the Settlor had in mind.

(3) I think it is legitimate for the Court to take judicial notice of the fact that Arabia is a country of marked extremes of wealth and poverty. It is also clear that, owing to the polygamous system of Islam, the members of a man's family in the sense of stock from a common ancestry — particularly if he himself is well to do, may vary in their financial situation to a degree which is unusual in western countries, and I do not think there is anything strange in a wealthy Arab landowner, particularly if he was orthodox in following the precepts of his religion, making provision for his needy relations.

I have, therefore, come to the conclusion that the correct interpretation of "family" in this trust is stock from a common ancestry, and I hold, therefore, the trust being charitable is not rendered invalid by the Rule against perpetuities. Authority for interpreting the word "family" in this wide sense will be found in *Williams v. Williams*[4]. Before passing on to the next question I may say that I agree with Mr. Atkinson that there must be some element of public utility to create a public charity, but, while it is undoubtedly difficult to draw the line, it seems to me that granted the disposition *In re Scarisbrick*[2] amounted to a charitable trust it would be difficult to maintain the trust in the present case did not come within that class.

I now turn to the second income trust. It reads :—

Settlor's next of kin as would from time to time be entitled thereto according to Mohamedan Law had the Settlor died intestate and in the shares and proportions in which according to the same Law such persons (if more than one) would be so entitled."

I think it is difficult to resist Mr. Atkinson's suggestion that this was intended to be a gift to some kind of fluctuating class, and that as such it does not comply with the essential requirements of vesting. It seems to me the words "from time to time" are fatal to its validity as a trust. As Mr. Atkinson said it might mean the Settlor's next-of-kin as at the date of the Settlor's death and thus refer to a fixed class which would remain unaltered throughout the trust, but such a construction renders the words from "time to time" superfluous, and it is, therefore, reasonable to infer some other construction is the correct one. Any other construction appears to infringe the Rule against perpetuities. I do not think Mr. Green's argument that the inclusion of the words "Mohamedan law" must have some point, and that that point is Mohamedan law favours early vesting with the consequence the next-of-kin referred to must be next-of-kin actually entitled at the date of the Settlor's death can dissipate the difficulties I have mentioned. I hold, therefore, that the second income trust is invalid.

There remains to be considered the effects of my findings. I think it is clear that in the case of the corpus trust and the income trust I have held invalid there is a resulting trust to the estate of the deceased. The question then to be decided is upon what trusts should the Trust premises now be held by the

defendants, the surviving trustees of the settlement? And the answer appears to depend on whether the resulting trusts are sought by the wills of the testator or whether they will pass as on an intestacy. As far as the premises 306 Tanjong Pagar Road are concerned I am of the view they undoubtedly pass under the (Singapore) will on the ground that the specific devise of these premises in the will revokes the provision relating to them in the settlement. With regard to the other houses the point arises whether the resulting trust should be held to cover the houses themselves or the income from the houses. I have not been able to find conclusive authority on this point but I am disposed to the opinion that the resulting trust should cover the houses themselves unless the interests of the trust in the settlement I have held to be valid required conversion. I think some support will be found for this opinion in a passage on page 138 of *Lewin on Trusts*, 15th Edn. The provision of $300 annually for the poor relations in Arabia cannot require this course since it was the intention this money should come from the income derived from the houses. I hold accordingly that the Trust premises now held by the defendants are held in trust for the administrators of the Singapore will, and, subject to any argument it may be desired to put forward on the matter, the defendants should in due course convey the property to the administrators. I have not, of course, been asked to deal with the whole summons and, therefore, I do not propose to express an unqualified opinion, but it may be of assistance to say that, as far as I have gone into the matter, it seems to me the position is the administrators can give effect to the wills as if there never had been a 1928 settlement except in so far as the income trust I have held to be valid is concerned. I would also add that it seems to me a reasonable view in the light of the available evidence to hold that the word "houses" in the will should be deemed to include the houses the Testator purported earlier to dispose of under the settlement.

In conclusion I would like to thank counsel for the very clear and comprehensive manner in which the issues have been put before me.

Order accordingly.

TAN CHOOI THIN (w) & ANOR.
v.
TEO WHEE HONG

[O. C. J. (Buhagiar, J.) August 3, 1953]

[Penang — Civil Suit No. 252 of 1952]

Damages — Measure of damages under ss. 7 and 8 Civil Law Ordinance (Cap. 42) — Whether earnings in contravention of statute should be considered — Damages under s. 7 to be deducted from damages under s. 8.

This case raises two important points concerning the award of damages under sections 7 and 8 Civil Law Ordinance.

The deceased was a member of the crew of a motor-junk and apart from his wages as such, he derived some income from private trading by importing and exporting what was alleged to be precious stones in contravention of the Customs legislation. Defendant's counsel submitted that this part of the deceased's earnings should not be taken into account.

Held: even if there was reliable evidence as to the nature of this business, the profits made therefrom cannot be excluded in reckoning the deceased's earnings which the Court fixed at $295 per month. Damages were accordingly awarded under section 8 at $15,000 and for loss of expectation of life under section 7 at $3,000.

On the submission by Counsel for the defendant that the damages under section 7 should be deducted from the amount awarded under section 8, —

Held, following **Davies v. Powell Duffryn Associated Collieries, Ltd.**(7): the provisions of section 7(5) of the Civil Law Ordinance do not entitle the plaintiffs to obtain damages in addition to that awarded under section 8. All that the sub-section does, according to the language used, is to provide that the rights shall co-exist.

Cases referred to:—

(1) *Kang Bark Teng & Anor. v. Lee Kwee Lim & anor.* (1952) M.L.J. 27.
(2) *Cutler v. Wandsworth Stadium, Ltd.* (1949) A.C. 398; (1949) 1 All. E.R. 544.
(3) *Benham v. Gambling* (1941) 1 All E.R. 7.
(4) *Seow Seng Choon v. Yam Kim Chye & Anor.* (1952) M.L.J. 244; 3 M.L.R. 81.
(5) *Heatley & Anor. v. Steel Co. of Wales, Ltd.* (1953) 1 All E.R. 489.
(6) *Yelland & ors. v. Powell Duffryn Associated Collieries, Ltd.* (1941) 1 All E.R. 278.
(7) *Davies v. Powell Duffryn Associated Collieries, Ltd.* (1942) A.C. 601.
(8) *Rose v. Ford* (1937) A.C. at p. 852.
(9) *The Aizkarai Mendai* (1938) P. at p. 276.
(10) *Ellis v. Raine* (1939) 2 K.B. 180.
(11) *Lok Yin v. Pat Thoo* (1948) M.L.J. 26.

CLAIM FOR DAMAGES.

Ong Huck Lim for the plaintiffs.

G. H. Conaghan for the defendant.

Cur. Adv. Vult.

Buhagiar, J. : — This is a claim by the plaintiffs as administratrix and administrator respectively of the Estate of Lim Huat Lye, for the benefit and on behalf of certain dependants of the deceased who suffered damage from the negligence of the defendant or his servant or agent and also for and on behalf of the Estate of the said deceased.